SUPREME COURT
OF THE
STATE OF CONNECTICUT

SUPREME COURT NO. SC 20232

ANGELA BORELLI, ADMINISTRATRIX OF THE ESTATE OF BRANDON GIORDANO
Plaintiff-Appellant

V.

OFFICER ANTHONY RENALDI, ET AL.
Defendants-Appellees

BRIEF OF THE PLAINTIFF-APPELLANT WITH SEPARATE APPENDIX 1 & 2

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2. Did the trial court err when it concluded that there was no dispute of fact and the Plaintiff's decedent was not an identifiable victim? .....

INTRODUCTION

This case concerns the tragic death of Brandon Giordano, a fifteen year old minor, who perished on a cold Friday night in winter when the Ford Mustang convertible he was a passenger in rolled over during a police chase that at one point topped speeds of over 60-70 miles per hour, and which included at least two police vehicles on the narrow and windy road that is Route 67 in Seymour and Oxford, Connecticut. The offense conduct that triggered the chase was not some violent crime such as a bank robbery or murder. Instead, the officers initiated the dangerous pursuit, thereby causing Eric Ramirez, the driver of the Mustang to flee, because Ramirez had a colored "underglow" light activated on his Mustang, something which constitutes a minor infraction in this state. Eric Ramirez, like Giordano, was a teenager at the time.

The first issue in this case presents an issue of apparent first impression for the Appellate Court. It asks: does General Statutes § 14-283, which governs the conduct of emergency vehicles, both permitting them to ignore certain traffic rules, and also mandating that they do so safely, impose a ministerial duty through the statement: "[t]he provisions of this section **shall not** relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property"? (Emphasis added.) General Statutes § 14-283 (d). Superior Court judges addressing this question have split over the answer. Those concluding that it does create a ministerial duty generally focus upon the statutory language itself, which uses the words "shall not." Those who conclude that § 14-283 does not create a ministerial duty have focused upon the fact that, generally, officers are given discretion concerning *how* they undertake to perform the duties with which they are charged.

The Plaintiff takes the position the differing conclusions of the various Superior Court judges are not actually at odds. Rather, both conclusions are correct. This is because the Supreme Court recently clarified that a ministerial duty *to act* may exist, even though *how to act* is simultaneously discretionary. *See, e.g.*, *See, e.g.*, *Strycharz* v. *Cady*, 323 Conn. 548 (2016) (holding that ministerial duty to communicate policies existed even though how to comply with policies was discretionary); *Jenkins* v. *West Hartford Board of Education*, Superior Court, judicial district of Hartford at Hartford, Docket No. CV14-6051677-S October 31, 2017, *Bright, J.*) *citing Strycharz* v. *Cady*, 323 Conn. 548, 566-67 (2016) (failure to supervise at all can be ministerial, even though the manner and adequacy of supervision is discretionary) (attached hereto in Appendix 2).

Accordingly, the correct conclusion, below, should have been that a ministerial duty existed under plain language of § 14-283 (d), and that it was for the jury to decide the factual question of whether the Defendants performed that duty at all – that is to say, whether the officers did give due regard for the safety of those involved in the chase in light of the seriousness of the offense. Given that the Defendants engaged in an extremely dangerous chase at night over a minor infraction, a jury could conclude that the officers engaged in the chase thoughtlessly, and did not give due regard to safety balanced against the nature of the minor offense conduct, as § 14-283 requires. Such a finding would require the conclusion that a ministerial duty was violated.

The alternate finding by the jury – that the officers did conduct the analysis, and merely did so negligently – would require the conclusion that the officers were protected by discretionary act immunity, unless an exception applied.

As an alternative position, the Plaintiff claims error in the court's conclusion that Giordano was not an identifiable victim because there was no evidence that pursuing officers were aware that there were passengers in the motor vehicle.[1] It is significant to this fact that the motor vehicle was a Ford Mustang convertible with its top down.[2] The teenage boys were also wearing brightly-striped pink zebra hats.[3] In fact, driving around town with the top down, in brightly-striped pink zebra hats, was a Friday night tradition for the boys.[4] Further, Officer Renaldi testified the pursuit began when he performed a U-turn to change direction and chase the boys.[5] In other words, he drove right past the boys before they sped off.

These facts, which are not acknowledged by the trial court's decision, when construed in the light most favorable to the Plaintiff, permit the conclusion that the pursuing officers, or at the very least Officer Renaldi, were aware of passengers in the Mustang.

But more to the point, requiring officers to be specifically aware of the precise number and identity of persons in a motor vehicle involved in a pursuit is not in line with this state's law of governmental immunity. *See Sestito* v. *Groton*, 178 Conn. 520, 522-23 (1979).[6] In that case, it was clear that anyone involved in the group of individuals fighting outside of the bar while an officer stood by and did nothing was an identifiable victim. Congruently, anyone in a motor vehicle involved in a pursuit must be construed, for public policy purposes, to be

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[1] The court did not reach the other two prongs of the identifiable victim subject to imminent harm analysis: whether the harm was apparent and whether the harm was imminent.
[2] A-219 – A-221. References to the Appendix shall be in the form "A-page number."
[3] A-219 – A-221.
[4] A-219 – A-221.
[5] A-196; A-237.
[6] Below, the Defendants argued, relying upon this Court's decision in *Merritt* v. *Town of Bethel Police Department*, 120 Conn. App. 806, 815-16 (2010), that *Sestito* has been limited to its facts. *See* A-61 – A-62. The undersigned is not aware of any statement from the Supreme Court concluding as much.

identifiable. Or, put differently, if a motor vehicle is involved in a particular situation, it imposes no further burden on police officers to conclude that any potential passengers are identifiable, even if the officer later testifies that he did not see one or more specific passengers.

For the reasons that follow, this Court should find reversible error in either or both of the above issues. If a ministerial duty is found, this Court should reverse with instructions to deny summary judgment. If this Court agrees that Giordano was identifiable, then this Court should reverse with instructions to consider the other two prongs of the identifiable victim imminent harm exception.

FACTS AND PROCEDURAL HISTORY

Except for the conclusion that there was no evidence supporting that pursuing officers knew of the presence of Giordano in the Mustang convertible, the Plaintiff does not take any issue with the trial court's statement of facts. The statement of facts that follows therefore largely parrots the facts in the memorandum of decision, and contains references to other parts of the record only where appropriate.

On the evening of Friday, March 9, 2012, Giordano and another friend, Dion Major, were passengers in a Mustang convertible being operated by their friend, Eric Ramirez.[7] At the time, the top was down, even though it was winter, and the boys were wearing brightly-striped pink zebra hats, a Friday night tradition of theirs.[8]

In order to go to Major's house in Seymour, Ramirez exited Route 8 northbound at exit 22, and turned left on Route 67 towards Oxford.[9] A colored "underglow" light affixed to his undercarriage was activated at the time, the use of which is a minor infraction in

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[7] A-282 – A-283.
[8] A-219 – A-221.
[9] A-283.

Connecticut.[10] *See, e.g.*, General Statutes § 14-96q (j) (unauthorized use of colored or flashing lights an infraction).

Officer Renaldi, a Seymour police officer on patrol on Route 67, noticed the offensive underglow light, and initiated a pursuit, accelerating and activating his lights and sirens to do so.[11] Ramirez, with the vigor and stupidity of teenage youth, took off at a high rate of speed.[12] Renaldi did not cease his pursuit, but instead attempted to proceed to halt the minor infraction he had observed by continuing,[13] even though he was losing ground on the Mustang throughout the chase.[14] Route 67 is a relatively narrow road with many turns. It was also night time.

Renaldi eventually lost the Mustang but, several minutes later, he found it, flipped over on its top.[15] Giordano, who had been in the back seat of the tiny Mustang convertible, was dead.[16] Officer Michael Jasmin, who had joined the pursuit at an unidentified point in time, later would try to distance himself from Giordano's death, claiming he never even knew a pursuit was going on in the first place.[17]

Independent witness, Steven Landi, however, confirmed that two different police cruisers with lights activated were in pursuit.[18] The trial court concluded that those facts, construed in the light most favorable to the Plaintiff, established Officers Anthony Renaldi

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[10] A-283.
[11] A-284.
[12] A-284.
[13] A-284.
[14] *See* A-41.
[15] A-284.
[16] A-284.
[17] A-285.
[18] A-226 – A-228.

and Michael Jasmin were both pursuing the Mustang in separate cruisers, with Officer Jasmin in the rear.[19]

On February 25, 2014, the Plaintiff filed a complaint seeking damages for wrongful death and indemnity pursuant to General Statutes § 7-465 against Officer Anthony Renaldi, Officer Michael Jasmin, their supervisor, Sergeant William King, and the Town of Seymour. The Defendants filed their Answer and Special Defenses on May 6, 2014, including the special defense of governmental immunity. The Plaintiff replied on June 16, 2014, with a general denial, and the pleadings were closed shortly thereafter.

Several years later, on July 15, 2016, the Defendants moved for summary judgment as to the whole complaint claiming, inter alia, the defense of governmental immunity.[20] The Plaintiff objected on September 23, 2016. Oral argument occurred on two separate occasions on January 30, 2017 and October 3, 2017. In the intervening time, the trial court requested additional briefing on the impact local policies could have on the discretionary nature of a duty. The parties filed supplemental briefs on February 22, 2017.

On September 26, 2017, the trial court issued its memorandum of decision. The trial court adopted the reasoning of those Superior Court decisions which have concluded that General Statutes § 14-283 does not impose a ministerial duty, relying upon the reasoning of *Parker* v. *Stadalink*, Superior Court, judicial district of Waterbury, Docket No. CV13-6020769-

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[19] A-285.

[20] The Defendants also claimed that Michael Jasmin was not involved at all, and Sergeant King was similarly not aware of the pursuit. Further, the Defendants claimed that Officer Renaldi did not violate a ministerial duty to keep dispatch informed of the pursuit, and that there was no dispute of fact that Defendants' conduct was not the proximate cause of Giordano's death. The Superior Court did not address any of these issues, instead disposing of the entire motion on the ground of ministerial duty and the identifiable prong of the imminent harm exception.

S (May 4, 2016, *Brazzel-Massaro, J.*). The trial court then turned its attention to the identifiable victim imminent harm exception, concluding that Giordano was not identifiable because there was no evidence suggesting that Renaldi knew Giordano was a passenger.

This appeal followed, and was filed on October 13, 2017.

ARGUMENT

The primary question presented to this Court, although of first impression, is narrow and circumscribed, focusing on the plain meaning of the language of General Statues § 14-283. It is therefore instructive to first discuss what questions are not before this Court. This Court is not being asked to determine whether Giordano contributed to his own death by deciding to get into Ramirez's vehicle earlier that night, or other issues pertaining to causation. Although the Defendants did raise the issue of causation below, the trial court did not reach it, and therefore it is not properly before this Court.

This Court is also not being called upon to dictate *how* police officers are to engage in the pursuit of a motor vehicle. To the extent that has been done, it was done by the legislature, when it passed § 14-283, and instructed state and local agencies to adopt pursuit policies.

Accordingly, the question before this Court is limited to determining whether the legislature intended to create a ministerial obligation on officers to first account for the seriousness of the offense and the dangerousness of the pursuit before engaging in it when the legislature passed § 14-283. If this Court does find such a ministerial duty, it falls to the jury to decide if that ministerial duty was violated in this case – that is to say, it falls to the jury to determine if the pursuing officers failed to take those factors into account at all when they first engaged in an extremely dangerous night-time pursuit of a minor traffic infraction.

Looking to those facts, a jury could reason that, because the officers did engage in a dangerous night-time pursuit on a narrow and windy road over a minor infraction, they therefore did so thoughtlessly, without regard to the strictures of § 14-283.[21] Accordingly, as set forth below, summary judgment should be denied.

A. Standard on summary judgment.

The standard applicable to Motions for Summary Judgment is well-settled. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact . . . . On appeal, [the Court] must determine whether the legal conclusions reached by the trial court are legally and logically correct and whether they find support in the facts set out in the memorandum of decision of the trial court. . . . [The Court's] review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *Grady* v. *Somers*, 294 Conn. 324, 331 (2008).

Although the Plaintiff notes that the trial court mostly construed the facts correctly in favor of the Plaintiff, the Plaintiff does claim, below, that the trial court incorrectly concluded that § 14-283 does not impose a ministerial duty, and therefore did not reach the issue of whether it was for the jury to decide whether that duty had been breached. Further, the trial

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[21] A jury could, concededly, also find that the officers *did* take into account the seriousness of the offense and dangerousness of the pursuit. The point is, however, that reasonable minds can interpret the same evidence in disparate ways, and thus there is a dispute of fact.

court incorrectly concluded that there was no evidence by which Officer Renaldi could have known that a passenger was in the vehicle, having not acknowledged evidence showing that the top was down and the teenage boys were wearing brightly-striped pink zebra hats.

For the reasons that follow, this Court should reverse.

B. General Statutes § 14-283 imposes a ministerial duty.

Governmental immunity for municipalities exists to avoid the chilling effect that a different rule would have upon necessary discretion that is afforded to public employees. *Edgerton* v. *Clinton*, 311 Conn. 217, 229-30 (2014). Thus governmental immunity is concerned with circumstances where a public employee must choose between different courses of action. *See, e.g.*, *Durrant* v. *Board of Education*, 284 Conn 91, 106 (2007). In contrast, where a duty is ministerial, either because the legislature has determined it should be, or otherwise, the concern of a chilling effect dissipates. In the case of a statutory determination of a ministerial duty, the notion is that General Assembly has already determined that discretion should not exist with respect to the subject matter at issue. The requirement that an officer, at the start of a pursuit, take account of the safety of others, and balance that against the seriousness of the offense, is one such mandatory requirement on which there is no discretion, as set forth below.

1. The two differing interpretations amongst the decisions of the Superior Court are not inconsistent with each other; rather, they can be construed in harmony.

General Statutes § 14-283 provides, in pertinent part:

> "(b) (1) The operator of any emergency vehicle may (A) park or stand such vehicle, irrespective of the provisions of this chapter, (B) except as provided in subdivision (2) of this subsection, proceed past any red light or stop signal or stop sign, but only after slowing down or stopping to the

> extent necessary for the safe operation of such vehicle, (C) exceed the posted speed limits or other speed limits imposed by or pursuant to section 14-218a or 14-219 as long as such operator does not endanger life or property by so doing, and (D) disregard statutes, ordinances or regulations governing direction of movement or turning in specific directions."

That section continues, "(d) [t]he provisions of this section **shall not** relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property." (Emphasis added.) General Statutes § 14-283 (d).

Superior Courts addressing the meaning of the above, and whether it creates a ministerial or discretionary duty, have split. For example, in *Docchio* v. *Bender*, Superior Court, judicial district of Waterbury, Docket No. CV98-0146014-S (August 15, 2002, *Holzberg, J.*) (32 Conn. L. Rptr. 689), the court concluded, based upon statements of the Supreme Court in *Tetro* v. *Stratford*, 189 Conn. 601, 609-10 (1983), that § 14-283 imposed a ministerial duty upon police officers in a motor vehicle pursuit, *and that whether that duty was followed was a factual determination for the jury. See also, e.g., Boone* v. *Mills,* Superior Court, judicial district of Litchfield at Litchfield, Docket No. 51318 (October 17, 1990) (McDonald, J.) (2 Conn. L. Rptr. 636). ("The rules for such a pursuit are clearly set forth in the statute [§ 14-283] and if the officer neglected to follow the mandate of the statute . . . thereby caused the plaintiff's injury, immunity may not apply.")[22]

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[22] A non-exhaustive list of other superior court decisions reaching the same or a similar conclusion includes: *Dempsey* v. *Reinhart*, Superior Court, judicial district of New London, Docket No. CV06-5001497-S (December 18, 2009, *Cosgrove, J.*) (949 Conn. L. Rptr. 87); *Martinez* v. *Hartford Police Dept.*, Superior Court, judicial district of Hartford, Docket No. CV07-5011769-S (December 1, 2008, *Bentivegna, J.*); *Estate of Forster* v. *Branford*, Superior Court, judicial district of Waterbury, Docket No. CV05-4010120-S (January 30, 2007, *Munro, J.*) (42 Conn. L. Rptr. 852); *Vilton* v. *Burns*, Superior Court, judicial district of Waterbury,

Tetro had concerned a police pursuit of young teenage boys in a motor vehicle, who were believed by the officers to be too young to legally drive, and were therefore committing a minor offense. When the police approached the boys in a police cruiser, the young driver took off, ultimately striking another motor vehicle. The driver of that other motor vehicle brought suit against the officers, alleging negligence. The officers claimed that § 14-283 absolved them of liability. They did not claim the doctrine of governmental immunity, which at the time was still developing.

The Supreme Court thus addressed the officer's claim of the meaning and effect of § 14-283, noting that "courts [in other states], construing similar statutory language, have explained that emergency vehicle legislation provides only limited shelter from liability for negligence. The effect of the statute is merely to displace the conclusive presumption of negligence that ordinarily arises from the violation of traffic rules. The statute **does not** relieve operators of emergency vehicles from their general duty to exercise due care for the safety of others." (Emphasis added.) *Tetro* v. *Stratford*, *supra*, 189 Conn. at 609.

Looking to this language, trial courts such as *Docchio* have concluded that the inverse is also true, that § 14-283 imposes a ministerial duty to consider safety in light of the seriousness of the offense. This is necessary in order to ensure the safety of the public roadways. *See, e.g.*, *Pelletier* v. *Petruck*, Superior Court, judicial district of Hartford, Docket No. CV07-5009064-S (September 10, 2008, *Dubay, J.*) (46 Conn. L. Rptr. 288) (for public

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Docket No. CV00-0169481-S (June 22, 2004, *Alander, J.*) (37 Conn. L. Rptr. 425); *Pellegrino* v. *Branford*, Superior Court, judicial district of New Haven, Docket No. CV99-0430717-S (February 10, 2003, *Arnold, J.*) (34 Conn. L. Rptr. 43); *Allen* v. *Board of Fire Commissioners*, Superior Court, judicial district of Waterbury, Docket No. CV00-0167547-S (August 2, 2002, *Sheldon, J.*) (33 Conn. L. Rptr. 113); *Green* v. *New Haven*, Superior Court, judicial district of New Haven, Docket No. CV-342537 (July 14, 1994, *Fracasse, J.*).

policy purposes, the operation of a motor vehicle in the usual course by a public official must be construed as ministerial because "[g]overment employees, like ordinary citizens, must operate their vehicles in a reasonable safe manner and avoid creating foreseeably unreasonable risks of harm to the motoring public. Ordinary citizens drive their cars every day, not just [government employees] and hence the operation of a motor vehicle would be deemed ministerial.")

Superior Courts on the other side of the split have reached a different conclusion. For example, in *Parker* v. *Stadalink*, Superior Court, judicial district of Waterbury, UWY-CV13-6020769-S (May 4, 2016, *Brazzel-Massaro, J.*) (62 Conn. L. Rptr. 281),[23] the court concluded that § 14-283 did not create a ministerial duty because to construe it as doing so would seem to run afoul of the Appellate Court's statements in *Coley* v. *Hartford*, 140 Conn. App. 315 (2013), *aff'd*, 312 Conn. 150, 164-65 (2014) and *Faulkner* v. *Daddona*, 142 Conn. App. 113, 122-23 (2013), that police officers are generally afforded discretion in their response to public safety situations. These Superior Court cases have also looked to such factors as the mandate of § 14-283 for municipalities and police departments to adopt policies concerning the manner in which pursuits are to be conducted, which they construe as meaning that § 14-283 must be construed to have created non-ministerial duties.

Although these two lines of cases are often viewed as being in conflict, they need not be construed as such. Rather, under recent Connecticut law, the distinction between

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[23] A non-exhaustive list of Superior Court decisions determining that § 14-283 is discretionary are: *Paternoster* v. *Paszkowski*, Superior Court, judicial district of Fairfield, Docket No. CV14-6042098-S (September 1, 2015, *Kamp, J.*); *Dudley* v. *Hartford*, Superior Court, judicial district of Hartford, Docket No. CV09-5033767-S (July 24, 2013, *Scholl, J.*); *Tucker* v. *Branford*, Superior Court, judicial district of Hartford, Docket No. Cv06-0252918-S (April 23, 1998, *Dorsey, J.*).

discretionary and ministerial duties has sometimes played out in ways that are not immediately intuitive.

For example, the Supreme Court recently found a ministerial duty to act, even though the manner of that action was discretionary. *See, e.g.*, *See, e.g.*, *Strycharz* v. *Cady*, 323 Conn. 548 (2016) (holding that ministerial duty to communicate policies existed even though how to comply with policies was discretionary); *Jenkins* v. *West Hartford Board of Education*, Superior Court, judicial district of Hartford at Hartford, Docket No. HHD-CV14-6051677-S (October 31, 2017, *Bright, J.*) *citing Strycharz* v. *Cady*, 323 Conn. 548, 566-67 (2016) (failure to supervise at all can be ministerial, even though how to supervise is discretionary).

Applying these principals to § 14-283, it is reasonable to construe § 14-283 as imposing a ministerial duty to actually consider the health and safety of those involved in light of the seriousness of the alleged offense conduct at the start of a pursuit. Simultaneously, § 14-283 leaves the "how" of the performance of that duty up to the discretion of the officer. But the important factor is that the officer must engaged in some sort of analysis to that effect at the start of a pursuit.

By way of further example, an officer who engages in a pursuit thoughtlessly, without considering the health and safety of others vis a vis the seriousness of the offense, has violated the ministerial duty created by § 14-283, because that officer has not engaged in the required analysis at all. In contrast, any officer who does consider the health and safety of others, but nevertheless did so negligently, would be subject to the normal rules of governmental immunity, including the identifiable victim subject to imminent harm exception.

The above interpretation of § 14-283 brings the various different decisions of the Superior Court into harmony. This is because it is no longer a question of whether § 14-283

"does" or "does not" create a ministerial duty. Rather, the statute mandates that health and safety be considered, but provides the officers discretion in how to conduct that analysis. The import is that the legislature wanted these factors to be considered at the beginning of each pursuit, and thus they must be considered, even though an officer has discretion as to his or her ultimate conclusion.

The above is no different than the situation in *Cady*, where a directive from the Board of Education required a school to create and communicate a crossing guard duty schedule, but provided discretion as to the particulars of that schedule, such as how long shifts would be, and who would serve what shift. There, because the evidence showed that the schedule had not been finalized or, if finalized, had not been communicated to staff, there was a dispute of fact as to whether a ministerial duty was performed. If not performed, it was violated. Because the evidence was not clear, it was for the jury to decide the matter.

Here, similarly, there is evidence that a jury could look at to conclude that Officer Renaldi initiated a pursuit thoughtlessly. The alleged offense conduct was incredibly minor – the use of a colored light on the undercarriage of a vehicle. Simultaneously, the chase was extremely dangerous, high-speed, at night, on a windy and narrow roadway, and involving a convertible. A reasonable juror looking to these facts could conclude that Officer Renaldi therefore did not consider the seriousness of the offense and the dangerousness of the pursuit prior to initiating it. Therefore, summary judgment was required to be denied.

2. In the alternative, those cases finding a ministerial duty under General Statutes § 14-283 have the better argument.

Those Superior Court decisions finding a ministerial duty have done so on a public policy basis. Namely, whereas typically governmental immunity is applied to those activities that are uniquely government functions, the operation of a motor vehicle on a public roadway

is not unique to the government. Rather, ordinary citizens, such as Steven Landi, the innocent bystander who Eric Ramirez, Officer Renaldi, and Officer Jasmin, flew by at a high rate of speed on March 9, 2012, use the public roadways on a daily basis. Accordingly, those courts that have found that § 14-283 imposes a ministerial duty have done so on the conclusion that it is desirable, from a public policy perspective, to mandate that officers act reasonably on the road. Any other conclusion creates the risk of chaotic and unpredictable roadways.

Further, the above-construction is consistent with the State and Town police pursuit policies that were in place at the time. Specifically, the State policy provides: "When engaged in a pursuit, police officers **shall drive** with due regard for the safety of persons and property." (Emphasis added.) Regs. State of Connecticut 14-283a-4 (b) (4).[24] The town policy provides: "A continuing pursuit (over a great distance and for a longer period of time) is authorized when the pursuing officer has reasonable grounds to believe that an individual clearly exhibits an intent to avoid arrest by using his motor vehicle to flee. It is important that an officer weigh the seriousness of the offense which has been committed against the hazards present to the health and welfare of citizens that might be affected by the chase. If the pursuit is initiated, a continuous balancing of the seriousness versus public safety **is mandatory**." (Emphasis added.) Seymour Pursuit Policy, 5.11.12.B.[25] A reasonable interpretation of these state and local policies is that the state and local agencies understood that the operation of an emergency vehicle, even one in the pursuit of a suspect, **must** be done with safety, because § 14-283 requires as much. If the state and local agencies charged with interpreting the

[24] A-176.
[25] A-182.

statute believed it to create a mandatory ministerial duty, it is reasonable to conclude that this was because the statute did do so.

Further, to construe the statute otherwise, as the alternate line of Superior Court cases suggest, is not desirable from a public policy perspective for at least two reasons. First, that interpretation negates the clear public policy statement of the legislature, through the language of § 14-283 (d), that "[t]he provisions of this section **shall not** relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of all persons and property." (Emphasis added.)

If § 14-283 (d) does not create a ministerial duty, then it becomes effectively toothless. It would cause the legislative directive contained in § 14-283 (d) to be mere surplusage – a mere suggestion for safety – not a demand, and one that was entirely unenforceable to boot.

That would violate the basic rules of statutory construction. "'It is a basic tenet of statutory construction that the legislature did not intend to enact meaningless provisions. . . . Accordingly, care must be taken to effectuate all provisions of the statute.'" (Citation omitted.) *State* v. *Szymkiewicz,* 237 Conn. 613, 621 (1996). If follows that "'statutes must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant . . . .'" *Id.* Nullifying legislative intent is not the business of the courts, and it therefore should not be the result of this appeal.

Second, the Superior Court decisions that have found only a discretionary duty have done so based upon broad policy statements in appellate decisions of a nonspecific nature. It is true that *Coley* v. *Hartford*, *supra*, 140 Conn. App. at 323 did say that there is "considerable discretion inherent in law enforcement's response to an infinite array of situations implicating public safety on a daily basis," that and *Faulkner* v. *Daddona*, *supra*,

142 Conn. App. at 122-23 did say "a police officer's decision whether and how to enforce a statute necessarily requires an examination of the surrounding circumstances . . . . Such a decision thus invariably involves the exercise of judgment and discretion."

But neither of those decisions dealt with the specific strictures § 14-283. That is significant. Section 14-283 represents a legislative determination as to what should happen in a police pursuit. *Coley* concerned a case where officers were called to a domestic violence incident and, unable to initially locate the offender, left to prepare an arrest warrant. Several hours later, they were called back to the same address for a similar complaint and, while setting up a perimeter, the offender shot and killed the plaintiff's decedent. *Coley* has nothing to do with police pursuits or pursuit statutes. It is inapposite.

The same is true of *Faulkner*, which does not address a police pursuit. There, the Appellate Court made the unremarkable statement that, generally, the failure to enforce a statute does not require the conclusion that a ministerial duty was violated, because generally officers have discretion as to whether to enforce a statute, or not. This conclusion does not, however, apply to § 14-283, which is not a statute that can be "enforced" by an officer. It is a statutory mandate *directed* at officers. For that independent reason, the reasoning of those Superior Court cases construing § 14-283, on the basis of *Faulkner*, to create only discretionary duties, should be rejected, and this Court should reverse.

C. The Plaintiff must be construed to have been identifiable for public policy purposes.

This Court is aware that one element of the identifiable victim imminent harm exception to the defense of municipal immunity is that there must be an identifiable victim. *See, e.g.*, *Grady* v. *Somers*, 294 Conn. 324, 353-354 (2009). Nevertheless, "the identifiable person contemplated by the exception need not be a specific individual . . . ." (Internal

quotation marks omitted.) *Texidor* v. *Thibedeau*, 163 Conn. App. 847, 862 (2016). On this issue, the trial court erred in two ways.

First, it concluded that no evidence had been offered to show that Officer Renaldi was aware passengers were in the vehicle.[26] To the contrary, however, there were several pieces of evidence that, construed in the light most favorable to the Plaintiff, did support such a factual finding. First, the motor vehicle in question was a Ford Mustang convertible with its top down in winter,[27] an unusual circumstance that a jury could conclude would not lightly be ignored by the officers. Second, the teenage boys were also wearing brightly-striped pink zebra hats.[28] Driving around town with the top down, in bright-striped pink zebra hats was a Friday night tradition of the boys,[29] and Renaldi was, in fact, familiar with the vehicle and the boys themselves.[30] As with the first fact, the jury could conclude that it would be difficult for an officer to ignore three young men with brightly-striped pink zebra hats. A jury could also conclude that Officer Renaldi would have recognized the boys immediately. Third, Officer Renaldi testified the pursuit began when he performed a U-turn to change direction and chase the boys.[31] The implication is that he went right past them. It was not as though he only witnessed them from afar. Given these facts, there was evidence supporting the factual conclusion that Officer Renaldi was aware there were passengers in the Mustang.

Second, the Superior Court erred by inference when it concluded that specific information of the presence of a passenger was required at all. The origin of the identifiable

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[26] The court did not reach the other two prongs of the identifiable victim subject to imminent harm analysis: whether the harm was apparent and whether the harm was imminent.
[27] A-219 – A-221.
[28] A-219 – A-221.
[29] A-219 – A-221.
[30] A-244.
[31] A-196; A-237.

victim imminent harm exception lies in *Sestito* v. *Groton*, 178 Conn. 520 (1979). In that case, a police officer simply watched from across a street as a group of individuals poured out of a bar and began a fight in a parking lot. Eventually, the plaintiff's decedent was shot and killed.

The decedent in *Sestito* was clearly identifiable, even though he was one of many individuals, and was not specifically identified by the officer. This was because, **any person** in that group who was shot was identifiable for purposes of governmental immunity. It would not have mattered if the police officer was unable to determine which specific person would be shot prior to the shooting occurring. *See also, Texidor* v. *Thibedeau*, *supra*, 163 Conn. App. at 862 ("the identifiable person contemplated by the exception need not be a specific individual"). In *Sestito*, the **number** of potential shooting victims was not material to the Court's analysis. What mattered, instead, was that the officer could conclude that each of them was to a significant imminent harm that objectively should have been apparent to the officer.

By way of example, if Steven Landi, the independent witness to the pursuit, was struck by Ramirez or Renaldi, and sued, the officers would not automatically have been entitled to immunity. *See, e.g.*, *Tetro* v. *Stratford*, *supra*, 189 Conn. at 609-10 (1983). This would be true even if the officers did not see Steven Landi until he was struck. *Id.*

In light of the above, the conclusion that a passenger of a motor vehicle involved a high-speed chase is not identifiable unless the pursuing officer has specific knowledge of the passenger's presence is against the current status of Connecticut law. It is also poor public policy. It should not be the case that an officer must look inside a motor vehicle and count the number of occupants before they are able to be treated as identifiable. Indeed, in such

situations, the circumstances are often unfolding rapidly, and would not permit such careful counting of the occupants of a motor vehicle.

Separately, this Court may conclude that the Plaintiff was identifiable because § 14-283 (d) made him so. That section, as noted states, "[t]he provisions of this section shall not relieve the operator of an emergency vehicle from the duty to drive with due regard for the safety of **all persons** and property"? (Emphasis added.). Thus, the legislature, through statutory action, has already labelled all persons involved in a pursuit identifiable.

For any of the above reasons, either because there was evidence creating a dispute of fact, because the Superior Court's decision was out of line with current Connecticut law, or because §14-283 (d) made the Plaintiff identifiable, this Court should reverse as to the identifiable victim analysis.

CONCLUSION

For the foregoing reasons, this Court should reverse, concluding either (1) that § 14-283 imposes a ministerial duty, and that it is a jury question as to whether that duty was followed, or (2) that a dispute of fact existed as to whether Giordano was identifiable, such that the matter must be returned to the Superior Court for analysis regarding the other two prongs of the identifiable victim subject to imminent harm exception to governmental immunity.

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CERTIFICATION

I hereby certify the following in accordance with Practice Book § 67-2:

1. The version of this Brief and any Appendices being filed with the Supreme Court in hard copy are the same as the version that has been electronically filed;

2. An electronic version of the Brief and any Appendix was electronically filed on January 4, 2019;

3. The Briefs and any Appendices have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

4. The form and font requirements of Practice Book § 67-2 have been complied with and the font in this Brief is Arial 12; and

A true and accurate copy of the Brief and any Appendix was sent to all counsel and pro se parties of record, and the trial judges who rendered the applicable decision by regular mail, on January 7, 2019 as follows:

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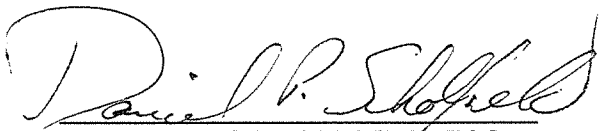

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